

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEPHEN BUSHANSKY,

Plaintiff,

v.

DIVERSEY HOLDINGS, LTD., SELIM
BASSOUL, ROBERT FARKAS, JUAN R.
FIGUEREO, ERIC FOSS, KENNETH
HANAU, RODNEY HOCHMAN, SUSAN
LEVINE, MICHEL PLANTEVIN, PHILIP
WIELAND, KATHERINE S. ZANOTTI, and
EMILY ASHWORTH,

Defendants.

Case No. _____

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

JURY TRIAL DEMANDED

Plaintiff Stephen Bushansky (“Plaintiff”), by and through his undersigned counsel, for his complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE AND SUMMARY OF THE ACTION

1. This action is brought by Plaintiff against Diversey Holdings, Ltd. (“Diversey” or the “Company”) and the members of Diversey’s Board of Directors (the “Board” or the “Individual Defendants”) for their violations of Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78n(a), 78t(a), and U.S. Securities and Exchange Commission (“SEC”) Rule 14a-9, 17 C.F.R. § 240.14a-9, and to enjoin the vote on a proposed transaction, pursuant to which Diversey will be acquired by Solenis LLC (“Solenis”) through Solenis’ affiliates Olympus Water Holdings IV, L.P. (“Parent”), Olympus Water Holdings Limited (“Parent GP”), and Diamond Merger Limited (“Merger Sub”) (the “Proposed Transaction”).

2. On March 8, 2023, Diversey and Solenis issued a joint press release announcing entry into an Agreement and Plan of Merger (the “Merger Agreement”). Under the terms of the Merger Agreement, each holder of Diversey common stock will receive \$8.40 in cash for each share of Diversey common stock (the “Merger Consideration”).

3. On May 15, 2023, Diversey filed a Schedule 14A Definitive Proxy Statement (the “Proxy Statement”) with the SEC. The Proxy Statement, which recommends that Diversey stockholders vote in favor of the Proposed Transaction, omits or misrepresents material information concerning, among other things: (i) Diversey management’s financial projections, relied upon by the Company’s financial advisor Evercore Group L.L.C. (“Evercore”) in its financial analyses; and (ii) the data and inputs underlying the financial valuation analyses that support the fairness opinion provided by Evercore. The failure to adequately disclose such material information constitutes a violation of Sections 14(a) and 20(a) of the Exchange Act as Diversey stockholders need such information to make a fully informed decision whether to vote in favor of the Proposed Transaction or seek to exercise their dissenters’ rights.

4. In short, unless remedied, Diversey’s public stockholders will be forced to make a voting or appraisal decision on the Proposed Transaction without full disclosure of all material information concerning the Proposed Transaction being provided to them. Plaintiff seeks to enjoin the stockholder vote on the Proposed Transaction unless and until such Exchange Act violations are cured.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(a) and 20(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder pursuant to

Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

6. This Court has jurisdiction over the defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because defendants are found or are inhabitants or transact business in this District. Moreover, Diversey's common stock trades on the Nasdaq Global Select Market, which is headquartered in this District, rendering venue in this District appropriate.

THE PARTIES

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of Diversey.

9. Defendant Diversey is a Cayman Islands corporation, with its principal executive offices located at 1300 Altura Road, Suite 125, Fort Mill, South Carolina 29708. The Company provides hygiene, infection prevention, and cleaning solutions in Europe, North America, the Asia Pacific, the Middle East, Africa, and Latin America. Diversey's common stock trades on the Nasdaq Global Select Market under the ticker symbol "DSEY."

10. Defendant Selim Bassoul ("Bassoul") has been a director of the Company since February 2021.

11. Defendant Robert Farkas ("Farkas") has served as a director of the Company since February 2021.

12. Defendant Juan R. Figuereo (“Figuereo”) has been a director of the Company since February 2021.

13. Defendant Eric Foss (“Foss”) is Non-Executive Chairman and has been a director of the Company since February 2021.

14. Defendant Kenneth Hanau (“Hanau”) has been a director of the Company since November 2020.

15. Defendant Rodney Hochman (“Hochman”) has been a director of the Company since September 2021.

16. Defendant Susan Levine (“Levine”) has been a director of the Company since February 2021.

17. Defendant Michel Plantevin (“Plantevin”) has been a director of the Company since November 2020.

18. Defendant Philip Wieland (“Wieland”) has been Chief Executive Officer (“CEO”) of the Company since July 2020, and a director since February 2021. Defendant Wieland previously served as the Company’s interim CEO from January 2020 to July 2020 and as interim Chief Financial Officer (“CFO”) from June 2019 to January 2020.

19. Defendant Katherine S. Zanotti (“Zanotti”) has been a director of the Company since March 2022.

20. Defendant Emily Ashworth (“Ashworth”) has been a director of the Company since November 1, 2022.

21. Defendants identified in paragraphs 10-20 are referred to herein as the “Board” or the “Individual Defendants.”

OTHER RELEVANT ENTITIES

22. Solenis is a leading global producer of specialty chemicals focused on delivering sustainable solutions for water-intensive industries, including the pulp, packaging paper and board, tissue and towel, oil and gas, petroleum refining, chemical processing, mineral processing, biorefining, power, municipal, and pool and spa markets. Headquartered in Wilmington, Delaware, Solenis has 49 manufacturing facilities strategically located around the globe and employs a team of over 6,500 professionals in 130 countries across six continents.

23. Parent is a Cayman Islands exempted limited partnership and an affiliate of Solenis.

24. Parent GP is a Cayman Islands exempted company incorporated with limited liability and general partner of Parent.

25. Merger Sub is a Cayman Islands exempted company and a wholly owned subsidiary of the Parent.

SUBSTANTIVE ALLEGATIONS

Background of the Company

26. Diversey's fully-integrated suite of solutions combines patented chemicals, dosing and dispensing equipment, cleaning machines, services and digital analysis and serves more than 85,000 customers in over 80 countries via a network of approximately 9,000 employees globally. The Company is the leading global pure play provider to the approximately \$46 billion cleaning and hygiene industry for the Institutional and Food & Beverage markets, where Diversey holds the first or second position in the key markets in which it operates. The Company is also one of only two large, global players able to serve global strategic accounts ("GSAs"). Diversey reports results of operations in two segments: Institutional and Food & Beverage.

27. On March 17, 2023, Diversey announced its fourth quarter and full year 2022 financial results and business development highlights. Net sales for the fourth quarter were \$701.6

million, up from \$672.4 million in the prior year period. Net sales for the full year 2022 were \$2.8 billion, up from \$2.6 billion in the prior year.

The Proposed Transaction

28. On March 8, 2023, Diversey and Solenis issued a joint press release announcing the Proposed Transaction, which states, in relevant part:

WILMINGTON, Del. & FORT MILL, S.C.--(BUSINESS WIRE)--Mar. 8, 2023-- Solenis ("Solenis") and Diversey Holdings, Ltd. ("Diversey" or the "Company") (NASDAQ: DSEY) today announced they have entered into a definitive merger agreement under which Solenis will acquire Diversey in an all-cash transaction valued at an enterprise value of approximately \$4.6 billion. Upon completion of the merger, Diversey will become a private company.

Under the terms of the agreement, Diversey shareholders (other than shareholders affiliated with Bain Capital Private Equity ("Bain Capital")) will receive \$8.40 per share in cash, which represents a premium of approximately 41.0% over Diversey's closing share price on March 7, 2023, the last full trading day prior to the transaction announcement, and a premium of approximately 59.0% over Diversey's 90-day volume-weighted average price (VWAP). Bain Capital will receive \$7.84 per share in cash and will rollover a portion of its shares of Diversey into an affiliate of Solenis in exchange for common and preferred units of such affiliate.

Headquartered in Wilmington, Delaware, Solenis is a leading manufacturer of specialty chemicals used in water-intensive industries, which was acquired by Platinum Equity in 2021. Diversey is a leading provider of hygiene, infection prevention and cleaning solutions based in Fort Mill, South Carolina.

"The merger presents a unique opportunity to enhance value and create a more diversified business with increased scale, broader global reach, and superior customer service capabilities. It will enable the combined company to grow and provide a number of attractive cross-selling opportunities, including meeting increasing customer demand for water management, cleaning and hygiene solutions," said Phil Wieland, Chief Executive Officer of Diversey.

Solenis CEO John Panichella will lead the combined company following the transition and integration.

"This is a strategic combination of two leading global products, services, and technologies providers with proven track records of product innovation who offer truly differentiated solutions to customers," said Mr. Panichella. "In combining these two complementary businesses, we expect to usher in a new and exciting chapter in our long history of helping customers tackle core challenges such as

water and energy management, partnering on sustainability issues to work towards a cleaner, safer world, and reducing environmental impacts. With continued support from Platinum Equity and now Bain Capital, we are confident that we'll maximize the opportunities ahead."

"This is a merger of two leading businesses that is fully complementary," added Eric Foss, Non-Executive Chairman of the Board of Directors of Diversey. "We believe the transaction creates significant value realization for our shareholders."

Transaction Details

Solenis is a portfolio company of Platinum Equity. Bain Capital, which invested in Diversey in 2017 and subsequently took the Company public in 2021, is currently the largest shareholder of Diversey. Under the terms of the transaction, Bain Capital will contribute approximately 56% of its existing equity into Solenis at an implied value per Diversey share of \$7.84 and will sell its remaining shares to Solenis for cash at the same price. After negotiations with a special committee of Diversey's Board of Directors composed entirely of independent directors (the "Special Committee"), Bain Capital agreed to accept less consideration per share than the consideration to be paid to the other holders of Diversey's shares.

Diversey's Board of Directors formed the Special Committee to evaluate and negotiate the transaction with the assistance of independent financial and legal advisors. Following this process, the Special Committee unanimously determined that the transaction with Solenis is in the best interests of Diversey and its shareholders, and, acting upon unanimous recommendation by the Special Committee, the Diversey Board of Directors unanimously approved the merger and recommended that Diversey shareholders vote in favor of the merger. The Special Committee negotiated the terms of the merger agreement with assistance from its independent financial and legal advisors.

In connection with the transaction, Solenis has entered into a support agreement with Bain Capital, pursuant to which Bain Capital has agreed to vote all of its Diversey shares (which represent approximately 73% of Diversey's outstanding shares) in favor of the transaction, subject to certain terms and conditions set forth therein. Solenis intends to finance the transaction with a combination of committed debt and equity financing, including the contribution by Bain Capital.

The merger is expected to be completed in the second half of 2023, subject to the satisfaction of customary closing conditions, including approval by Diversey shareholders holding a majority of the outstanding shares of the Company and receipt of regulatory approvals. Upon closing of the transaction, Diversey's ordinary shares will no longer be listed on any public market.

Fourth Quarter and Full Year 2022 Earnings Conference Call Update

In light of today's announcement, Diversey will not host an earnings conference call or provide financial guidance in conjunction with its earnings release for the fourth quarter and full year 2022 financial results. Going forward, Diversey will issue earnings releases consistent with its current schedule, including financial results for the fourth quarter and full year 2022, but will suspend hosting earnings conference calls and webcasts.

Advisors

Evercore is serving as financial advisor to the Special Committee and Wachtell, Lipton, Rosen & Katz is serving as the Special Committee's legal counsel.

J.P. Morgan Securities LLC and Centerview Partners LLC are serving as financial advisors to Diversey on the transaction. Kirkland & Ellis LLP is providing legal counsel to Bain Capital and Diversey.

BofA Securities, Goldman Sachs and Piper Sandler are serving as financial advisors to Solenis on the transaction. Gibson, Dunn & Crutcher LLP is providing legal counsel and Willkie Farr & Gallagher LLP is providing debt financing counsel to Platinum Equity and Solenis. BofA Securities and Goldman Sachs are leading the debt financing for the acquisition.

Insiders' Interests in the Proposed Transaction

29. Diversey insiders are the primary beneficiaries of the Proposed Transaction, not the Company's public stockholders. The Board and the Company's executive officers are conflicted because they will have secured unique benefits for themselves from the Proposed Transaction not available to Plaintiff and the public stockholders of Diversey.

30. Notably, Company insiders stand to reap substantial financial benefits for securing the deal with Solenis. Under the terms of the Merger Agreement, all unvested IPO restricted share units ("RSUs"), unvested performance-based RSUs ("PSUs"), unvested Closing PSUs, TRA RSUs, and unvested Non-IPO RSUs will vest and convert into the right to receive cash payments upon a qualifying termination in connection with the merger, as set forth in the following table:

Named Executive Officer	Restricted Ordinary Shares (Single Trigger)	2022 Bonus RSUs (Single Trigger)	Unvested IPO RSUs (Double Trigger)	Unvested Company PSUs (Double Trigger)	Unvested Closing RSUs (Double Trigger)	TRA RSUs (Double Trigger)	Unvested Non-IPO RSUs (Double Trigger)	Total (\$)
Philip Wieland	4,414,007	—	559,994	1,766,352	525,000	415,031	588,790	8,269,174
Todd Herndon	—	—	559,994	706,541	227,060	—	235,519	1,729,114
Gaetano Redaelli	—	—	139,994	196,325	58,428	86,695	65,444	546,886
Sinéad Kwant	1,288,787	142,500	559,994	312,194	122,500	46,522	104,068	2,576,565
Rudolf Verheul	—	—	559,994	263,903	89,177	52,209	87,965	1,053,248

31. Moreover, if they are terminated in connection with the Proposed Transaction, Diversey's named executive officers are set to receive substantial cash severance payments in the form of golden parachute compensation, as set forth in the following table:

	Cash Severance (\$) ⁽¹⁾	Equity (\$) ⁽²⁾	Continued Health Benefits (\$)	Total (\$)
Philip Wieland	1,779,157	8,269,174	—	10,048,331
Todd Herndon	1,167,750	1,729,114	36,290 ⁽³⁾	2,933,154
Gaetano Redaelli	1,690,863	546,886	—	2,237,749
Sinéad Kwant	867,665	2,576,565	—	3,444,230
Rudolf Verheul	557,400	1,053,248	—	1,610,648

The Proxy Statement Contains Material Misstatements and Omissions

32. Specifically, as set forth below, the Proxy Statement fails to provide Company stockholders with material information or provides them with materially misleading information concerning: (i) the Company's projections; and (ii) the inputs and assumptions underlying the financial analyses performed by the Company's financial advisor Evercore. Accordingly, Diversey stockholders are being asked to vote in favor of the Proposed Transaction or seek to exercise their dissenters' rights without all material information at their disposal.

Material Omissions Concerning the Company's Financial Projections

33. The Proxy Statement omits material information with respect to the Company's projections.

34. For example, the Proxy Statement fails to include the key upsides and key risks underlying the Company’s financial projections.

35. The omission of this information renders the statements in the “Management Projections” section of the Proxy Statement false and/or materially misleading in contravention of the Exchange Act

Material Omissions Concerning Evercore’s Financial Analyses

36. The Proxy Statement also describes Evercore’s fairness opinion and the various valuation analyses performed in support of its opinion. However, the description of Evercore’s fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, Diversey’s public stockholders are unable to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Evercore’s fairness opinion in determining whether to vote in favor of the Proposed Transaction or seek to exercise their dissenters’ rights. This omitted information, if disclosed, would significantly alter the total mix of information available to Diversey’s stockholders.

37. With respect to Evercore’s *Discounted Cash Flow Analysis*, the Proxy Statement fails to disclose: (i) quantification of the inputs and assumptions underlying the discount rates ranging from 9.0% to 10.0%; and (ii) the Company’s net debt as of January 1, 2023.

38. The omission of this information renders the statements in the “Opinions of the Special Committee’s Financial Advisor” section of the Proxy Statement false and/or materially misleading in contravention of the Exchange Act.

39. The Individual Defendants were aware of their duty to disclose the above-referenced omitted information and acted negligently (if not deliberately) in failing to include this information in the Proxy Statement. Absent disclosure of the foregoing material information prior

to the stockholder vote on the Proposed Transaction, Plaintiff, and the other stockholders of Diversey will be unable to make a sufficiently informed voting or appraisal decision in connection with the Proposed Transaction and are thus threatened with irreparable harm warranting the injunctive relief sought herein.

CLAIMS FOR RELIEF

COUNT I

Claims Against All Defendants for Violations of Section 14(a) of the Exchange Act and Rule 14a-9 Promulgated Thereunder

40. Plaintiff repeats all previous allegations as if set forth in full.
41. During the relevant period, defendants disseminated the false and misleading Proxy Statement specified above, which failed to disclose material facts necessary to make the statements, considering the circumstances under which they were made, not misleading in violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9 promulgated thereunder.
42. By virtue of their positions within the Company, the defendants were aware of this information and of their duty to disclose this information in the Proxy Statement. The Proxy Statement was prepared, reviewed, and/or disseminated by the defendants. It misrepresents and/or omits material facts, including material information about (i) the Company's financial projections; and (ii) the inputs and assumptions underlying Evercore's financial analyses. The defendants were at least negligent in filing the Proxy Statement with these materially false and misleading statements.
43. The omissions and false and misleading statements in the Proxy Statement are material in that a reasonable stockholder would consider them important in deciding how to vote on the Proposed Transaction.

44. By reason of the foregoing, the defendants have violated Section 14(a) of the Exchange Act and SEC Rule 14a-9(a) promulgated thereunder.

45. Because of the false and misleading statements in the Proxy Statement, Plaintiff is threatened with irreparable harm, rendering money damages inadequate. Therefore, injunctive relief is appropriate to ensure defendants' misconduct is corrected.

COUNT II

Claims Against the Individual Defendants for Violations of Section 20(a) of the Exchange Act

46. Plaintiff repeats all previous allegations as if set forth in full.

47. The Individual Defendants acted as controlling persons of Diversey within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers and/or directors of Diversey, and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Proxy Statement filed with the SEC, they had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

48. Each of the Individual Defendants was provided with or had unlimited access to copies of the Proxy Statement and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

49. Each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the transactions giving rise to the securities violations as alleged herein, and exercised the same. The Proxy Statement at issue contains the unanimous recommendation of

each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of the Proxy Statement.

50. In addition, as the Proxy Statement sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The Proxy Statement purports to describe the various issues and information that they reviewed and considered—descriptions the Company directors had input into.

51. By virtue of the foregoing, the Individual Defendants have violated Section 20(a) of the Exchange Act.

52. As set forth above, the Individual Defendants had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) and SEC Rule 14a-9, promulgated thereunder, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' conduct, Diversey stockholders will be irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor on behalf of Diversey, and against defendants, as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction and any vote on the Proposed Transaction, unless and until defendants disclose and disseminate the material information identified above to Diversey stockholders;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff;

C. Declaring that defendants violated Sections 14(a) and/or 20(a) of the Exchange Act, as well as SEC Rule 14a-9 promulgated thereunder;

D. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and

E. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: May 18, 2023

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